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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RALPHS GROCERY COMPANY

and

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 324

Case No. 21-CA-039867

REPLY BRIEF IN SUPPORT OF CHARGING PARTY'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

I. INTRODUCTION

The objections raised by Ralphs Grocery Company ("Ralphs") to United Food and Commercial Workers, Local 324 ("Local 324")'s request for reimbursement of arbitration expenses are factually incorrect and lack merit. Ralphs argues that (1) the Union never raised the argument about paying the costs of the arbitration before the ALJ, (2) because the Union lost the arbitration it should bear the costs, and (3) the dispute should be handled under the collective bargaining agreement, not resolved by the Board.

However, as the record clearly shows, Local 324 raised this argument at the first opportunity with the ALJ. Charging Party's Post-Hearing Brief at p. 28-29 (requesting reimbursement of arbitration costs and citing p. 45 of the CBA). It was not possible to raise the argument during the arbitration because, at that point, there was no basis to declare either party the "loser." Granting the Union's request for payment would make the Union whole in accordance with the Act.

II. ARGUMENT

A. The Board Should Restore the Funds to the Union Under The Act.

The Board has discretion in fashioning orders so long as they "effectuate the policies of [the Act]." 29 U.S.C. § 160(c); *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 216, 85 S.Ct. 398, 406, 13 L.Ed.2d 233 (1964). The Board's orders must be remedial, however, rather than punitive. *Manhattan Eye Ear & Throat Hosp. v. NLRB*, 942 F.2d 151, 156–57 (2d Cir.1991). Relief "must be sufficiently tailored to expunge only the *actual*, and not merely *speculative*, consequences of the unfair labor practices." *Sure–Tan, Inc. v. NLRB*, 467 U.S. 883, 900, 104 S.Ct. 2803, 2813, 81 L.Ed.2d 732

(1984); Manhattan Eye Ear & Throat Hosp., 942 F.2d at 157. See Torrington Extend-A-Care Employee Ass'n v. N.L.R.B., 17 F.3d 580, 585 (2d Cir. 1994).

Contrary to Ralphs's argument, the Union does not base its claim to repayment entirely on the CBA; it bases its claim on the Act and the remedial ability of the Board. While the Union paid the costs of the arbitration in full as the "loser" at the arbitration, that decision was not final and binding, because it was overturned by the ALJ. But for Ralphs's unfair labor practices, the Union would not have borne these costs. Regardless of which party is the "loser" at the arbitration, the Company should reimburse the Union. *Northwest Engineering Co.*, 158 NLRB 624, 629 (1966) ("In the exercise of its remedial powers, the Board is required to restore a situation which calls for redress as nearly as possible to that which would have obtained, but for the unfair labor practices involved.")

B. The Union Raised the Issue at the First Opportunity.

Until the Arbitrator issued his award and the Union was required to pay the full costs of the arbitration, there was no reason for the Union to raise the issue. The Union had not yet paid anything. The Union raised the issue at the first opportunity after it incurred the costs: its post-trial brief before the ALJ. Charging Party's Post-Hearing Brief at p. 28-29. In that brief, the Union asked the ALJ to award "arbitrator and court reporter costs and fees" because of the collective bargaining agreement. The ALJ recommended that the issue be "addressed by the Board on exceptions, if any, after a full briefing by all parties." ALJ's Decision at 11:19-23. That is what is taking place now. Finally, even if the Union should have briefed the issue earlier, it is clear that "the Board

has discretion to reach remedial issues not raised by the parties." National Propane

Partners, L.P., 337 NLRB 1006 (2002).

C. No New Evidence is Required.

Ralphs argues that the Union should have presented facts about the meaning of the

term "loser" in the collective bargaining agreement. But the meaning of that term is not a

factual issue, nor is this a complicated dispute. The Union is not asking the Board to

interpret the bargaining agreement; it is asking the Board to make it whole for costs and

fees it incurred unilaterally as the "loser" of an arbitration it clearly should have won, but

for the Arbitrator's decision which the ALJ found was repugnant to the Act. According

to the ALJ, the Company should have been the "loser." As such, it should reimburse the

Union.

III. **CONCLUSION**

For the above-stated reasons, the Charging Party requests that its exception be

sustained and that the Company be ordered to reimburse the Charging Party \$5,935.65 in

arbitration costs and fees.

DATED: July 25, 2013

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STATEMENT OF SERVICE

I hereby certify that a copy of Charging Party's Reply Brief in Support of Charging Party's Exceptions to Administrative Law Judge's Decision was submitted by e-filing to the National Labor Relations Board on July 25, 2013.

The following parties were served with a copy of said documents by electronic mail on July 25, 2013:

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Dated July 25, 2013 at Tucson, Arizona.

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